

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.A-1689-MA of 2018 (O&M)

Date of decision: January 08, 2019

Vinita Rawat

...Applicant

Versus

Sunil Saroha @ Sonu

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajpal Singh, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Vinita Rawat has filed this application under Section 378(4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent Sunil Saroha @ Sonu, challenging the impugned judgment dated 22.05.2018 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Vinita Rawat filed a complaint against accused Sunil Saroha @ Sonu under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused borrowed friendly loan of ₹2,50,000/- from her from time to time i.e. from July 2015 to

November 2015 and promised to return the same in the month of April

2016. In the first week of April 2016, accused handed over a cheque bearing No.015261 dated 13.04.2016 for ₹50,000/- and cheque No.015260 dated 04.06.2016 for ₹2,00,000/-, in favour of the complainant, which on presentation for encashment, were returned back dishonoured with the remarks 'Account Blocked'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined herself as CW-1 and proved documents; original cheque Ex.C1, return memo Ex.C2, legal notice Ex.C3, postal receipt Ex.C4, registered envelop Ex.C5 and post card Ex.C6.

In defence, accused stated that husband of the complainant used to organize committee for 12 and 15 months in which he has also taken a share in one of the committee of ₹1,50,000/- for 15 months. Husband of the complainant used to take blank signed cheques from each member at the time of payment as security cheque. Accused further stated that he paid the committee installments on time but after completion of the committee, when he asked the husband of the complainant to return the cheque, he did not return the same.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 22.05.2018.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record.

The perusal of the record shows that no specific dates have

been mentioned as to when the amounts were given. It is written that

amounts were paid from time to time from July 2015 to November 2015 but there are no particulars that on which date, how much amount has been paid. There are no particulars that in whose presence and at which place the amounts were given and whether the money was withdrawn from the bank or it was lying in the house of the complainant. No security document or receipt has been obtained while advancing the loan. No other document of any type has been got executed at the time of advancing the loan. There is no document of any type to show the loan transaction.

The complainant in the complaint has stated that she advanced the loan from July 2015 to November 2015 but in cross-examination, she stated that they have advanced ₹2 lakhs in cash and no second installment was advanced. Only an amount of ₹2 lakhs was advanced and same was advanced in one installment. This cross-examination of the complainant falsifies her own case that loan of ₹2,50,000/- was advanced and that was advanced from time to time i.e. from July 2015 to November 2015. In the cross-examination, complainant also stated that amount of ₹2 lakhs has been given without interest.

Learned Magistrate held that keeping in view the facts and circumstances, income of the complainant and especially the fact she is not an income tax payee and did not file return, she was not having any sufficient means to advance such a huge amount. Furthermore, as already discussed, nothing has been mentioned as to when the loan was demanded back. Learned trial Court has rightly relied upon the law laid down in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028.***

The perusal of the record shows that if the loan of only ₹2 lakhs

was advanced and it was without interest, then why cheques of ₹2,50,000/-

were issued. There is no explanation for this. Furthermore, legal notice was issued demanding payment of ₹2,50,000/-, which means that accused was not to pay ₹2,50,000/- as per evidence of the complainant.

The perusal of the findings given by learned Court below shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 22.05.2018 passed by learned JMIC, Faridabad, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

January 08, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No